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**November 4, 1996**

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**VIA MESSENGER**

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

**RECEIVED**

**NOV - 4 1996**

Federal Communications Commission  
Office of Secretary

Re: Ex Parte / CC Docket No. 96-128

Dear Mr. Caton:

On Thursday, October 31, 1996, AirTouch Paging ("AirTouch"), represented by Mark Stachiw, AirTouch's V.P. and Senior Counsel, and myself, met with David Furth and Karen Brinkmann of the Commercial Wireless Division of the Wireless Telecommunications Bureau. Also participating in the meeting were Judith St. Ledger-Roty, representing Paging Network, Inc.; Doug Glen, representing PageMart II; and Katherine M. Holden, representing the Personal Communications Industry Association.

Summarized below are the principal points made by AirTouch at the meeting, which were consistent with submissions made to the Commission by AirTouch in CC Docket No. 96-128.

1. The mechanism and rate for compensating PSPs adopted by the Commission will substantially, and perhaps irreparably, harm the wireless industry, particularly highly competitive paging and messaging service providers that

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William F. Caton  
November 4, 1996  
Page 2

utilize 800 numbers.<sup>1/</sup> In theory, the "carrier pays" system adopted by the Commission permits IXCs to "pass through" the costs of PSP compensation to 800 number users and subscribers. However, AirTouch (like other paging companies) has no mechanism for tracking calls placed from payphones to 800 numbers, and thus cannot pass PSP compensation charges on to individual 800 number subscribers if IXCs pass such charges through to AirTouch. In addition, paging and messaging companies typically do not have billing systems capable of providing itemized or detailed billing that is required for such charges. Even if a paging carrier could bill for the charges, the Commission's new rules permit up to a year to elapse between the charge and its being assessed against the paging carrier. In many cases, this effectively means that the paging carrier will be unable to pass through the cost to its subscriber. As a result, AirTouch will have no choice but to spread costs among all 800 subscribers, regardless of individual usage patterns, and the cost of 800 number service will increase by eightfold or more.<sup>2/</sup> Ultimately, demand for 800 service will be stifled.<sup>3/</sup>

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1/ Paging and messaging carriers use 800 numbers for a variety of purposes in their business. First, carriers may use such numbers to provide toll-free customer calls to their business offices. In this use, paging and messaging carriers are not much different than other businesses except that the price of the product sold is significantly less than many other businesses using 800 numbers, such as airlines and hotels. Second, paging and messaging carriers resell 800 numbers to their subscribers to initiate paging messages and retrieve voicemail. Paging and messaging carriers typically charge for these 800 numbers at cost -- approximately \$3.00-\$5.00 per month without a substantial number of included minutes of usage. However, non-subscribers to these services are at least as likely as subscribers to place calls to subscriber 800 numbers, especially when they have other means of initiating a page.

2/ If the Commission's compensation amount stands, a paging user receiving 100 calls per month could have its monthly charge for the 800 number increase to \$38.00-\$40.00.

3/ AirTouch has no reliable data on how many pages are initiated from payphones, but believes the number is  
(continued...)

William F. Caton

November 4, 1996

Page 3

2. The PSP compensation method adopted by the Commission is contrary to the public interest and does not accomplish the Commission's stated goals. According to the Commission, "fair compensation can best be ensured when ... the caller has the information necessary to make an informed choice as to whether to make the call and incur the compensation charge." Report and Order, para. 20 (emphasis added). But under the carrier pays system, the caller is not incurring a charge. Even under the Commission's "pass through" model, there is no guarantee -- as shown above by the example of AirTouch and other paging companies -- that the calling party ultimately will "incur the charge". The only certain means of accomplishing the Commission's stated goal is a "caller pays" system supported by a number of companies in this proceeding. Another principal goal -- mandated by Congress -- is to establish a competitive market for payphone calls. 47 U.S.C. § 276(b)(1). The carrier pays system again falls short. As long as PSPs are guaranteed \$.35 per call, and thereafter are guaranteed a per call "market" charge of whatever they tell the IXCs they are charging for a payphone call, PSPs have no incentive to move charges toward costs and foster a competitive market.<sup>4/</sup>

3. The compensation rate grossly overcompensates PSPs by paying for more than access to their customer premises equipment and the actual service provided by that CPE. As was demonstrated in the Petitions for Reconsideration of AT&T and PageNet, the compensation rate adopted by the Commission will result in PSPs being compensated for portions of the network not used. This would result in both overcompensation for PSPs and double

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3/(...continued)

substantial since paging services are used by highly mobile customers.

4/ Although the Commission provides that the calling party can reject calls from payphones, this does little to advance true competition. Because the calling party does not have any relationship with the PSP -- only through the IXC -- no real negotiation or rate competition can develop. In addition, real competition in payphones is a combination of location and price. There is nothing that would necessarily allow the geographic element of competition to develop under the Commission's plan.

William F. Caton  
November 4, 1996  
Page 4

recovery by the LECs.<sup>5/</sup> There is no correlation between the costs of the service and the compensation for that service. Instead, the Commission should consider allowing PSPs to share in access revenues generated by the LECs, thus eliminating the double recovery enjoyed by the LEC from the receipt of payment from both the PSP and the IXC for delivering a payphone call over the portion of their network from the central office to the payphone.

4. There is no statutory impediment to a calling party pays system. Neither the Telecommunications Act of 1996 nor the legislative history of the statute precludes such a system. Likewise, Section 226 (e)(2) of the Communications Act, enacted with TOCSIA, does not bar a calling party pays system. Section 226(e)(2) gave the Commission authority to prescribe -- but did not mandate -- compensation for PSPs for certain types of payphone calls.<sup>6/</sup> The Commission was considering the need for PSP compensation for 800 subscriber calls when Congress enacted the Telecommunications Act of 1996.<sup>7/</sup> In contrast to Section 226(e)(2), new Section 276 mandates compensation for "each and every payphone call," and eliminated the Commission's discretion not to prescribe compensation for certain payphone calls. The language of Section 226(e)(2) that

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5/ The local coin rate compensates the PSP for the use of the handset and for the transport of the call to the LEC's facilities, and for the use of the LEC's facilities to terminate the call. In an 800 call, the PSP is being compensated for the use of the set and the line and for termination (which it doesn't perform) and the LEC is getting payment from the payphone provider and the IXC (in the form of access charges). This excessive compensation is magnified when the PSP is a LEC.

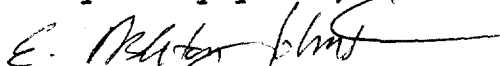
6/ "The Commission shall consider the need to prescribe compensation (other than advance payment by consumers) for owners of competitive public pay telephones for calls routed to providers of operator services that are other than the presubscribed provider of operator services for such telephones." 47 U.S.C. § 226(e)(2).

7/ See In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Notice of Proposed Rule Making, 10 FCC Rcd 11457 (1995).

William F. Caton  
November 4, 1996  
Page 5

apparently forbids "advance payment" (i.e., coin-in-the-box) and has caused the Commission concern in this proceeding, is not binding on the Commission. That language was set forth in a grant of discretionary authority to the Commission. More importantly, Congress specifically informed the Commission that it is not bound by that provision. The Joint Explanatory Statement of the Committee of Conference, with respect to Section 276, instructs the Commission that "[i]n place of the existing regulatory structure, the Commission is directed to establish a new system..." and "[i]n crafting implementing rules, the Commission is not bound to adhere to existing mechanisms or procedures established for general regulatory purposes in other provisions of the Communications Act."

Very truly yours,



E. Ashton Johnston

for PAUL, HASTINGS, JANOFSKY & WALKER LLP

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cc: David Furth  
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